assault upon him once he has arrived inside the police station. Any such conduct on the part of a police officer would rightly be regarded by the courts as a most serious matter, and severe penalties would be appropriate, regardless of the serious professional results which would almost certainly follow a conviction.

While therefore it cannot be too clearly stated that there can be no condonation of such conduct by a police officer if it is established, the fact remains that in a case such as the present, which depends to all practical purposes upon the single evidence of the complainant, who had shown himself by his conduct just prior to the alleged assault to be a thoroughly truculent person, it is essential that the matter should be examined with the most scrupulous care.

The defence position, in effect, is that consequent upon the complainant's refusal to allow himself to be removed to the lock-up a confused melee ensued, in the course of which the complainant incurred his injuries. The bruises on the chest and fore-arm are easily accounted for as having been occasioned in the tussle. The injury to the thigh less so. One cannot, however, exclude from consideration the possibility that this injury was caused either by the complainant knocking himself or being pushed against a table or other furniture or by his being accidentally trodden upon when in the course of the struggle he fell on the ground.

The learned Magistrate in his grounds of decision attaches importance to the fact that the defence witnesses — all of whom were necessarily police officers — were not in the same story as to how precisely the complainant incurred the injury to his thigh. At another point in his grounds of decision he has stressed that he formed the impression that the Police witnesses who were called for the defence wished to favour the appellant. That, perhaps, is understandable but it seems to me that the learned Magistrate has not given sufficient weight to the consideration that in such circumstances the fact that there were discrepancies in the accounts given by these various officers is a matter which might well be thought to be in favour of their truthfulness rather than the reverse. It would seem to be highly probable that the persons taking part in a brief and confused episode of this nature would not be in a position to state precisely how any particular bruise or injury was sustained. It is therefore, to my mind, not surprising — and certainly not a ground for suspicion — that the defence witnesses should have ventured differing suggestions as to the cause of the injury to the complainant's left thigh.

While one is naturally reluctant to interfere with findings of fact by any tribunal of first instance, I have nonetheless formed the view that the learned Magistrate has attached insufficient weight to the matters posed by the defence.

After the most anxious consideration I have come to the conclusion that, looking at the picture as a whole, it would be dangerous to allow this conviction to stand. The appeal must therefore be allowed, and the conviction and sentence set aside.

Appeal allowed.

Solicitors: *Allen & Gledhill; T. T. Rajah.*

HO KIN LUAN & ANOR. v. PUBLIC PROSECUTOR

[C.A. (Thomson C.J., Rigby and Hepworth JJ.) March 25, 1959]

[Ipoh — F.M. Criminal Reference No. 1 of 1959]

Criminal Law and Procedure — Enhancement of sentence — Criminal Procedure Code (Cap.6), ss.316 and 325 — Grant of certificate under Courts Ordinance, 1948, s.34 — Effect of.

Criminal Law and Procedure — Corporal punishment — Imposition of — Modern tendency of penal procedure and reform — Discretion of Court.

The appellants were prosecuted in the Magistrate's Court and convicted for putting a person in fear of injury in order to the committing of extortion contrary to section 385 of the Penal Code and each was sentenced to one year's imprisonment. Their appeals against conviction came for hearing before Good J. who in dismissing, exercised his revisional jurisdiction increased the sentences in each case to one year's imprisonment and six strokes with a cane. Subsequently the learned Judge took the view that the determination of the appeal involved two points which it was desirable in the public interest should be determined by the Court of Appeal, namely: (i) whether on the proper construction of section 316 of the Criminal Procedure Code, where a convicted person has appealed against his conviction only and the Public Prosecutor has not appealed against the inadequacy of the sentence the Court, on the hearing of the appeal, has jurisdiction to enhance the sentence; and (ii) whether it was proper to impose a sentence of whipping in the present case where the appellants' offence was not proved to have been accompanied by any actual violence on their part. He accordingly granted a certificate under section 34 of the Courts Ordinance to enable the appeal to be heard by the Court of Appeal.

Held: (1) whatever construction be placed upon section 316 of the Criminal Procedure Code which sets out the powers of a Judge in dealing with an appeal from a lower Court, power to enhance any sentence is clearly given by section 325 which provides that a Judge may, in any case "the record of the proceedings of which... comes to his knowledge" in his discretion, exercise any of the powers conferred by section 316 which include the power to enhance the sentence. The exercise of that power is made subject to the safeguard that no such order can be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by advocate in his own defence, but the condition precedent for its exercise is that the record must have come to the Judge's knowledge. The section imposes no restriction on the way in which the record may come to the Judge's knowledge and the condition is clearly complied with if it comes to his knowledge in the course of appeal proceedings;

(2) when Good J. granted his certificate under section 34 of the Courts Ordinance the enhanced sentences imposed by him disappeared as it were and what the Court of Appeal is concerned with is the question whether it should interfere with the sentences originally imposed by the Magistrate and in particular it is only concerned with the propriety of these sentences for there is no question as to their legality.

Observations on modern tendency of penal procedure and reform against imposition of corporal punishment.

Cases referred to:—

(1) *Public Prosecutor v. Choy Kok Kuan & Ors.* (1959) M.L.J. 80, C.A.

(2) *In re Chunbidya & Ors.* 62 I.A. 36, 39, P.C.

COURT OF APPEAL.

R. C. Mahadevarayan for the appellants.

Raja Azlan Shah (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

The judgment of the Court of Appeal was delivered by:

Thomson C.J.: The two appellants in this case were prosecuted in the Magistrate's Court at Ipoh for putting a person in fear of injury in order to the committing of extortion in contravention of section 385 of the Penal Code. That offence is punishable with two years' imprisonment or with fine or with whipping or with any two of such punishments. By reason of section 85 of the Courts Ordinance the offence is triable in the Magistrate's Court and by reason of section 87(1) the maximum sentence of imprisonment which can be imposed by a Magistrate's Court is twelve months and the maximum whipping that can be imposed is one of six strokes.

In the event both the appellants were convicted in the Magistrate's Court and each of them was sentenced to one year's imprisonment. Neither of them had any previous convictions for any offence.

Briefly, the case for the prosecution was that on the night of 17th January, 1958, a hand-grenade exploded outside the house of the complainant and two days later two persons spoke to him on the telephone from a public call box at Falim some two miles away. They said that the grenade incident had taken place and demanded $5,000. There was a great deal of evidence which does not call for discussion here which went to show that it was the two appellants who spoke from the Falim call box. The defence was one of *alibi*.

As has been said, the appellants were convicted and they then appealed against their convictions and sentences.

Their appeals against sentence were withdrawn and eventually the appeals against conviction came on for hearing before Good, J.

For some reason we have not been supplied with a note of the proceedings at the hearing of the appeal. In the event, however, the appeal was dismissed and the Judge in exercise of his jurisdiction in revision then enhanced the sentences imposed by the Magistrate's Court.

He thought that the sentences were clearly inadequate. On the other hand he thought that in view of the fact that the prosecution had elected to proceed in the Magistrate's Court and had taken no steps to have the case transferred to the Sessions Court or committed for trial in the High Court it would be wrong to impose any greater sentences than the Magistrate's Court was authorised by law to impose. In the circumstances he increased the sentences in each case from one of 1 year's imprisonment to one of 1 year's imprisonment and six strokes with a cane.

Subsequently the Judge took the view that the determination of the appeal involved two points which it was desirable in the public interest should be determined by the Court of Appeal. These points were as follows:—

" (i) Whether on the proper construction of section 316 of the Criminal Procedure Code, where a convicted person has appealed against his conviction only and the Public Prosecutor has not appealed against the inadequacy of the sentence the Court, on the hearing of the appeal, has jurisdiction to enhance the sentence.

(ii) Whether it was proper to impose a sentence of whipping in the present case where the appellants' offence was not proved to have been accompanied by any actual violence on their part."

He accordingly granted a certificate under section 34 of the Courts Ordinance to enable the appeal to be reheard by this Court.

As we pointed out in the case of *Public Prosecutor v. Choy Kok Kuan & Ors.* [1] the effect of section 34 of the Courts Ordinance is that when a certificate is granted under that section this Court cannot confine itself to the point stated in the certificate but must re-hear the original appeal from the Subordinate Court as a whole. Strictly speaking, therefore, we must in the present case before proceeding further dispose of the appeal against conviction. Before us, however, counsel for the appellants made no attempt to attack the convictions, and so far as they are concerned we would content ourselves with observing that they were fully supported by the evidence and that we see no reason for interfering with them.

The questions then arise as to whether we have power to enhance the sentences and whether if we have such power we think that we should exercise it in the present case.

The answer to the first of these questions is clearly in the affirmative for whatever construction be placed upon section 316 of the Criminal Procedure Code, which sets out the powers of a Judge in dealing with an appeal from a lower Court, power to enhance any sentence is clearly given by section 325 which provides that a Judge may, in any case "the record of the proceedings of which.....comes to his knowledge" in his discretion, exercise any of the powers conferred by section 316 which include the power to enhance the sentence. The exercise of that power is made subject to the safeguard that no such order can be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by advocate in his own defence, but the condition precedent for its exercise is that the record must have come to the Judge's knowledge. The section imposes no restriction on the way in which the record may come to the Judge's knowledge and the condition is clearly complied with if it comes to his knowledge in the course of appeal proceedings. As was said by Lord Atkin in the case of *In re Chunbidya & Ors.* [2] with reference to section 439 of the Indian Code the material provisions of which are similar to those of our section 325:—

> "Their Lordships are clearly of opinion that when the High Court has before it on appeal a record of a criminal proceeding, the condition precedent is performed, and the High Court can then, though the record has only come to its knowledge in the appellate proceeding, proceed to exercise its revision powers if it chooses to do so."

I would only add that that is a particularly strong case for it is one in which the High Court at Allahabad on the hearing of an appeal invoked the jurisdiction in revision to increase a sentence of transportation for life to a sentence of death.

With regard to the second question which arises, we are in the present case re-hearing the appeal and we have, therefore, to consider the question of whether we are satisfied as to the "correctness, legality or propriety" of the sentences (see section 323) or whether we are not so satisfied and ought to exercise our powers under section 325 to enhance them. The accused have had the opportunity of being heard in their defence for the question of whether or not we should exercise this power was fully argued before us by the Deputy Public Prosecutor and by counsel for the appellants.

At this stage it must be made plain that we are not concerned with an appeal against the decision of Good, J., to enhance the sentences of the present appellants by imposing an additional punishment of whipping. If we were concerned with such an appeal the short answer might well be that even though we might not ourselves have imposed the sentences of corporal punishment, as an appellate Court we would not be prepared to say that in the circumstances of the case they were so manifestly excessive or wrong in principle as would justify us in interfering with the undoubted discretion of the learned Judge in imposing them.

But that is beside the point. When Good, J., granted his certificate under section 34 of the Courts Ordinance the enhanced sentences imposed by him disappeared as it were and what we are concerned with is the question of whether we should interfere with the sentences originally imposed by the Magistrate and in particular we are only concerned with the propriety of these sentences for there is no question as to their legality.

We were referred by counsel for the accused to no less than four cases in the course of the last five years, in all of which Judges of the Supreme Court have held that, generally speaking, sentences of corporal punishment should not be imposed, except in cases involving violence or brutality on the part of the offender. With those expressions of opinion we agree. The modern tendency of penal procedure and reform is certainly against the imposition of corporal

punishment on adults as a retrograde measure. On the other hand we recognise, with regret, the fact that there has been a marked increase of lawlessness in recent times and certain types of offences, particularly extortion, are becoming increasingly prevalent, a deplorable state of affairs which has been acknowledged by the Legislature in the recent enactment of the Prevention of Crime Ordinance.

Whilst, therefore, we adhere to the view already expressed in these Courts on various occasions and whilst in principle we deprecate the use of corporal punishment except in cases involving violence or brutality, we acknowledge — as, indeed, we must — the fact that there may be cases which justify the Courts exercising the discretion, undoubtedly vested in them, of imposing a sentence of corporal punishment even though no actual violence or brutality may have been used. We emphasise, however, that even in such cases the Court should consider long and anxiously before it exercises such a discretion. Each case, of necessity, must depend upon its own facts and upon the character and antecedents of the offender.

In the present case, we are reluctant to interfere. The offence was undoubtedly a serious one. On the other hand the accused are first offenders and there is nothing to show any connection between them and the throwing of the hand-grenade of which they attempted to take advantage some two days after it occurred. Again it is clear that the Public Prosecutor whose views regarding the state of crime are entitled to some consideration did not regard the Magistrate's sentences as very inadequate. He made no attempt to appeal against them and we were informed that at the original hearing of the appeal he made no reference to them. At the original trial in the Magistrate's Court both the Public Prosecutor and the accused were represented by counsel and the case was very thoroughly gone into. In all the circumstances of this particular case we can see no reason for interfering with the exercise of his discretion by the Magistrate.

The only order we make is that the appeal against conviction is dismissed.

Order accordingly.

A.B.C. v. THE COMPTROLLER OF INCOME TAX, SINGAPORE

[A.C.J. (Buttrose J.) May 4, 1959]

[Singapore — Income Tax Case Stated No. 1 of 1959]

Income Tax — Assessment — Notices — Validity of — Whether Comptroller is required to specify sources of income — Waiver and estoppel — Proof of fraud or wilful default under s.73 of the Income Tax Ordinance (Cap. 166) — Case stated under s.82.

Income Tax Ordinance (Cap. 166) — Comparison with English and Australian legislation.

The Comptroller of Income Tax under the provisions of section 76 (1) of the Income Tax Ordinance, served upon the appellant certain Notices of Assessment and Additional Assessment dated December 22, 1954, in respect of the years of assessment 1948 to 1954 inclusive. These Notices were in the prescribed form and were completed before service, showing a total figure for assessable income carried forward and brought forward, a figure for chargeable income and a figure for tax payable but not disclosing any description or source of income. By letter dated December 23, 1954, the appellant objected to the assessments and the additional assessments in question, this letter being treated by the Comptroller as a Notice of Objection in writing under section 76 (2) of the Ordinance. The appellant did not in this letter raise any question of the invalidity of the Notices of Assessment and Additional Assessment. Further correspondence passed between the Comptroller and the appellant and the Comptroller finally gave notice of his refusal to amend the assessments or additional assessments in question in the course of the year 1958. The appellant thereupon appealed to the Board of Review under the provisions of section 79 (1) of the Income Tax Ordinance, and filed his Petition of Appeal under that section on August 28, 1958. No objection to the form or validity of the Notices was taken in this Petition. Notice of hearing by the Board of Review was given for January 6, 1959, and by his Notice dated January 5, the appellant gave notice to the Comptroller that at the hearing of the appeal before the Board of Review he intended to apply to the Board for permission to have his Petition amended by the addition thereto of a further Ground of Appeal as follows: "That the Notices of Additional Assessment and Assessment against which assessments the Petitioner is appealing did not contain in substance and fact the particulars on which the assessments have been made."

At the hearing of the application to amend, no Order was made by the Board either on the application or on the merits of the proposed amendment, but the Board informed the parties of its intention to state a case to the High Court. The case was accordingly stated, the material facts being substantially as set out above, and the following questions of law were referred for the opinion of the High Court:

(1) Are the Notices of Assessment (which term in these questions includes Notices of Additional Assess-